

**94-270 COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES**

**Chapter 1: PROCEDURES**

---

**SUMMARY:** This Chapter describes the nature and operation of the Commission, and establishes procedures by which the Commission's actions will be governed.

---

**SECTION 1. DEFINITIONS**

In addition to the definitions provided in Title 21-A, chapters 1, 13, and 14, the following definitions shall apply to the rules of the Commission, unless the context otherwise requires:

1. **Act.** "Act" means the Maine Clean Election Act, Title 21-A, chapter 14.
2. **Association.** "Association" means a group of two or more persons, who are not all members of the same immediate family, acting in concert.
3. **Campaign Deficit.** "Campaign deficit" means debts, liabilities, and unmet financial obligations from all previous campaigns as reported to the Commission on campaign termination report forms required by Title 21-A, chapter 13, subchapter II [§1017(9)].
4. **Campaign Surplus.** "Campaign surplus" means money, equipment, property and other items of value remaining after retiring previous campaign deficit as reported to the Commission on campaign termination report forms required by Title 21-A, chapter 13, subchapter II [§1017(9)].
5. **Candidate.** "Candidate" has the same meaning as in Title 21-A, chapter 1, subchapter I [§1(5)], and includes individuals running for office as a write-in candidate.

INFORMATIONAL NOTE: All contributions made after the day of the general election to a candidate who has liquidated all debts and liabilities associated with that election are deemed to be made in support of the candidate's candidacy for a subsequent election, pursuant to section 4.2.A(5)(e) of this rule. A candidate who collects funds subsequent to an election for purposes other than retiring campaign debt is required to register with the Commission. Title 21- A, chapter 13, subchapter II [§1013-A].

6. **Certified Candidate.** "Certified candidate" has the same meaning as in the Act [§ 1122(1)].
7. **Commission.** "Commission" means the Commission on Governmental Ethics and Election Practices established by Title 5, §12004-G, subsection 33, and 1 M.R.S.A. §1001 *et seq.*
8. **Contribution.** "Contribution" has the same meaning as in Title 21-A, chapter 13, subchapter II [§1012(2)].

9. **Election.** “Election” means any primary, general or special election for Governor, State Senator or State Representative. The period of a primary election begins on the day a person becomes a candidate as defined in 21-A M.R.S.A. §1(5) and ends on the date of the primary election. The period of a general election begins on the day following the previous primary election and ends on the date of the general election. The period of a special election begins on the date of proclamation of the special election and ends on the date of the special election.
10. **Expenditure.** “Expenditure” has the same meaning as in Title 21-A, chapter 13, subchapter II [§1012(3)].
11. **Fund.** “Fund” means the Maine Clean Election Fund established by the Act [§1124].
12. **In-Kind Contribution.** “In-kind contribution” means any gift, subscription, loan, advance or deposit of anything of value other than money made for the purpose of influencing the nomination or election of any person to political office or for the initiation, support or defeat of a ballot question.
13. **Member.** A “member” of a membership organization includes all persons who currently satisfy the requirements for membership in the membership organization, have affirmatively accepted the membership organization’s invitation to become a member, and either:
  - A. pay membership dues at least annually, of a specific amount predetermined by the membership organization; or
  - B. have some other significant financial attachment to the membership organization, such as significant investment or ownership stake in the organization; or
  - C. have a significant organizational attachment to the membership organization that includes direct participatory rights in the governance of the organization, such as the right to vote on the organization’s board, budget, or policies.

Members of a local union are considered to be members of any national or international union of which the local union is a part, of any federation with which the local, national, or international union is affiliated, and of any other unions which are members or affiliates of the federation. Other persons who have an enduring financial or organizational attachment to the membership organization are also members, including retired members or persons who pay reduced dues or other fees regularly to the membership organization.
14. **Nonparticipating Candidate.** “Nonparticipating candidate” has the same meaning as in the Act [§1122(5)].
15. **Participating Candidate.** “Participating candidate” has the same meaning as in the Act [§1122(6)].
16. **Qualifying Contribution.** “Qualifying Contribution” has the same meaning as in the Act [§1122(7)].

17. **Qualifying Period.** “Qualifying period” has the same meaning as in the Act, except that for special elections, vacancies, withdrawals, deaths, disqualifications or replacements of candidates, the qualifying period shall be the period designated in section 8 of this chapter [§1122(8)].
18. **Seed Money Contribution.** “Seed money contribution” has the same meaning as in the Act [§1122(9)].
19. **Write-In Candidate.** “Write-in candidate” means a person whose name does not appear on the ballot under the office designation to which a voter may wish to elect the candidate and who has filed a declaration to be a write-in candidate pursuant to 21-A M.R.S.A. § 722-A.

## SECTION 2. ORGANIZATION

1. **Commission.** The Commission on Governmental Ethics and Election Practices is an independent agency of the State, consisting of five (5) members appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over legal affairs and confirmation by the Legislature in accordance with Title 1, §1002, subsection 1. The Commission members will elect one member to serve as Chair. Except for the Chair, the members of the Commission have no individual authority.
2. **Office**
  - A. The Commission employs such staff as may be authorized by the Legislature. A Director supervises the staff and is responsible for all day-to-day operations. In the interim between Commission meetings, the Director reports to the Chair, who acts on behalf of the Commission on certain administrative matters. The Commission’s offices are located in the Public Utilities Commission Building at 242 State Street in Augusta, where any filing or written submission may be made between the hours of 8 a.m. and 5 p.m. on any day when state government offices are open, except that filings by facsimile or electronic means, where otherwise permitted by statute or rule, may be transmitted at any time. The office has a mailing address of 135 State House Station, Augusta, Maine 04333.
  - B. All records of the Commission are maintained in these offices, where they are available for inspection or copying, except as particular records are made confidential by law. The cost of copying Commission documents is set by the Director of the Commission, subject to reasonable limitations and approval of the Commission.
  - C. During any period when the position of Director is vacant, the Chair of the Commission will appoint an acting Director.

### SECTION 3. MEETINGS

1. **Regular Meetings.** The Commission shall meet at least once per month in any year in which primary and general elections are held.
2. **Special Meetings.** The Commission may meet at any time at the call of the Secretary of State, the President of the Senate, the Speaker of the House of Representatives, the Chairman of the Commission, or a majority of its members. Each member of the Commission must have at least 24 hours notice of the time, place and purpose of the meeting. If written notice is not feasible, telephone notice satisfies the foregoing requirement.
3. **Agenda.** The Director will prepare a written agenda for each meeting of the Commission. The agenda will contain items of business to be considered, staff findings and recommendations, and will include the date, time and location of the meeting. When possible, the agenda will be mailed to each Commission member at least 7 days before the meeting.
4. **Notice.** In addition to the public notice required by the public meetings law, 1 M.R.S.A. §406, notice of Commission meetings ~~will~~ shall be given to those directly involved in a matter ~~or affected by matters~~ pending before the Commission, as follows:
  - A. **Legislative Ethics.** When a properly filed request or referral is made for an advisory opinion on a question of legislative ethics, notice that the matter has been placed on the agenda for a Commission meeting will be given by mail to the Legislator whose circumstances or conduct is at issue, or to the Presiding Officer of either House referring the inquiry. When a complaint alleging a violation of the laws on legislative ethics is filed, the Legislator will be informed promptly of the nature of the allegations and the existence of any investigation by the Commission. Notice that the matter has been placed on the agenda for a Commission hearing will be given by certified mail to both the Legislator and the complainant not less than 10 days before the date set for a hearing.
  - B. **Campaign Reports and Finances Law; Lobbyist Disclosure Law.** Notice of the Commission's consideration of any noncompliance with the requirements of the Campaign Reports and Finances Law, the Maine Clean Election Act, or Lobbyist Disclosure Law will be provided to any person or organization alleged to have committed a violation and to any person who has officially requested a Commission investigation or determination, except that notice of the Commission's consideration of issuing subpoenas to conduct an investigation need not be given.
  - C. **~~Other Matters~~ Contents of Notice**
    - (1) ~~With respect to any other matter presented to the Commission, notice will be given to the person or organization whose conduct is at issue, and to any complainant, except as provided in Section 3, subsection 1, paragraph B of these rules.~~

- (2) The notice will include the date, time, and location of the Commission meeting. If mail notice of a meeting is not feasible, the staff will make best efforts to give oral notice to Commission members or to those entitled to notice under this provision.
5. **Public Meetings.** All meetings, hearings or sessions of the Commission will be open to the general public unless, by an affirmative vote of at least 3 members, the Commission requires the exclusion of the public, pursuant to 1 M.R.S.A. §1005 or 1 M.R.S.A. §1013(3).
6. **Quorum.** Every decision of the Commission must be made at a meeting at which at least 3 members of the Commission are present and voting. When it is impossible or impractical for a member of the Commission to travel to Augusta to attend a meeting in person, the member may participate in the meeting by telephone. That member will be considered present at the meeting and part of the quorum.

At least 2 members must be present in person for the conduct of a meeting or public hearing before the Commission. If fewer than 3 members are present in person for a hearing, however, objections to rulings of the presiding officer concerning the conduct of the hearing must be preserved until a meeting of the Commission at which a quorum is present in person. The presiding officer at a meeting or public hearing must be present in person.

7. **Minutes**
- A. The Director will prepare minutes of each business meeting of the Commission. These minutes will be the official record of Commission meetings, and will accurately record all matters considered.
- B. The minutes will record any executive session of the Commission and its subject matter, but will not report the proceedings of the executive session. Likewise, minutes will not be taken of any public hearing held by the Commission, since hearings are separately recorded.

#### SECTION 4. INITIATION OF PROCEEDINGS

1. **Legislative Ethics.** The Commission is authorized to investigate and make advisory recommendations to either House of the Maine Legislature concerning legislative conflicts of interest or any breach of the legislative ethics set forth in 1 M.R.S.A. §§ 1001 - 1023. The Commission's opinion may be sought by three methods, or the Commission may act on its own motion.
- A. **Legislator's Own Conduct**
- (1) A Legislator seeking an advisory opinion with respect to his or her own circumstances or conduct should make a written request for an opinion, setting forth the pertinent facts with respect to the legislative matter at issue and the circumstances of the Legislator giving rise to the inquiry.

- (2) The request will be officially filed only when received at the offices of the Commission. The Director will promptly send a copy of the request to the Chair, and the matter will be placed on the agenda for the next Commission meeting, or if necessary, at a special meeting.
- (3) An oral request by a Legislator for an opinion with respect to his or her own circumstances will not be considered an official request for an advisory opinion, and a Legislator making such a request will be so notified, by letter, and encouraged to file a written request.

B. **Complaints.** Any written complaint will be included in the agenda of the next Commission meeting.

- (1) **Complaint by a Legislator.** Copies of any sworn complaint filed by a Legislator will promptly be sent to the Legislator against whom the complaint has been lodged and to the Commission Chair, in each case identifying the Legislator making the complaint. A complaint invokes the Commission's authority only if made under oath and only if it addresses an alleged conflict of interest relating to circumstances arising during the term of the legislature then in office.

(2) **Other Complaints**

- (a) The Director will review each complaint to determine whether the matter relates to the Commission's statutory mandate. When a complaint is filed, the Director, in consultation with Commission Counsel, will review the matter to determine whether the complaint has sufficient merit to warrant recommending the calling of a meeting. When a meeting is called, the Commission will determine in executive session whether to hear the complaint. If the nature of the complaint clearly does not fall within the scope of the Commission's jurisdiction, the Director will so notify the complainant by letter within 14 days of receiving the complaint. In such cases, the respondent need not be notified. The Commission may reverse any administrative decision.
- (b) An oral complaint by any person alleging a conflict of interest concerning any legislator does not constitute a complaint under 1 M.R.S.A. §1013(2)(B), and a person registering such a complaint will be so notified, by letter.

C. **Referral by Presiding Officer.** When a Legislator has requested an advisory opinion from the Presiding Officer of the House of which he/she is a member, and the Presiding Officer has referred the inquiry directly to the Commission, the Director will arrange a meeting of the Commission as soon as possible to consider the question.

2. **Election Campaign Reporting and Maine Clean Election Act Violations**

- A. **Report Review.** The Commission staff will review all reports filed pursuant to 21-A M.R.S.A., chapters 13 and 14 to verify compliance with the reporting requirements set by statute or rule. Notice of any omission, error, or violation will be given by mail to the filer and a copy of the notice and any other communication made to or from the filer relating to the problem(s) will be placed in the filer's record. The Commission staff will establish a reasonable time period for the filer to remedy any omission or error. If the filer fails to respond within that time frame, the Commission staff may extend the time period within which the filer must comply or place the matter on the agenda of the next Commission meeting, along with all documents relating to the case. Additionally, any apparent violations or occurrences of substantial nonconformance with the requirements of the law will be placed on the agenda of the next meeting.
- B. **Late Reports and Registrations.** Where required by statute, notice of failure to file a required report will be timely sent by Commission staff. When a report or registration is filed late, the Director's recommendations will be based on the following considerations:
- (1) Lateness of report or registration,
  - (2) Reason for lateness,
  - (3) Kind of report (more stringent application for pre-election reports),
  - (4) Amount of campaign funds not properly reported,
  - (5) Previous record of the filer,
  - (6) Good faith effort of the filer to remedy the matter; and
  - (7) Whether the late filing had an effect on a certified candidate's eligibility for matching funds.
- C. Reports of noncompliance with the provisions of the campaign registration and reporting laws or the Maine Clean Election Act that may come to the attention of the Commission staff from any source other than review of the reports filed will be reported to the Commission Chair. Any person (as defined in 21-A M.R.S.A. §1001) may make an official request for a Commission investigation or determination by filing a written request at the Commission's office, setting forth such facts with sufficient details as are necessary to specify the alleged violation. Statements should be made upon personal knowledge. Statements which are not based upon personal knowledge must identify the source of the information which is the basis for the request, so that respondents and Commission staff may adequately respond to the request. A copy of any such written request will be promptly mailed to the candidate or organization alleged to have violated the statutory requirements. An official request will be placed on the agenda of the next Commission meeting.
- D. An oral report of a violation, or a written request containing insufficient detail to specify the violation charged, does not constitute an official request for a

Commission determination, and a person registering such a complaint will be so notified.

~~E. If the Director and Counsel are in agreement that the subject matter of a request for an investigation is clearly outside the jurisdiction of the Commission, the staff may forward the request to the appropriate authority or return it to the person who made the request, provided that the staff notifies the Commission members of the action at the next Commission meeting. [NOTE: MOVED BELOW WITHOUT CHANGE]~~

~~E.~~ E. The signature of a person authorized to sign a report or form constitutes certification by that person of the completeness and accuracy of the information reported. The use of a password in filing an electronic report constitutes certification of the completeness and accuracy of the report.

### 3. **Lobbyist Disclosure Procedures**

- A. **Report Review.** The Commission staff will monitor all filings made pursuant to 3 M.R.S.A. §311 *et seq.* for timeliness, legibility, and completeness. The staff will send the lobbyist a notice of any apparent reporting deficiency, including failure to use prescribed forms. The notice will include a request that the deficiency be corrected within 15 business days of the notice. If remedy is not made, it will be noted on the agenda of the next Commission meeting. The Commission may reject reports that are incomplete or illegible.
- B. **Late Registrations and Reports.** Notice will be given by mail to any lobbyist whose registration, monthly disclosure report, or annual report is delinquent. In the case of a late monthly report, the notice must be mailed within 7 business days following the filing deadline for the report. In the case of late annual reports and registrations, the notice must be mailed within 15 business days following the filing deadline. The notice must include a statement specifying the amount assessed. A penalty of \$100 will be assessed the lobbyist for every month that a monthly disclosure report is late and a penalty of \$200 will be assessed the lobbyist and employer for every month a registration or annual report is filed late. For purposes of 3 M.R.S.A. §319(1), the month will end on the 15th day of the month following the month in which a report was due. Any failure to submit a required report, registration, or penalty fee will be noted on the Commission agenda.
- C. **Suspensions.** The Commission may suspend any person from lobbying who fails to file a required report or pay an assessed fee. A notice of the suspension must be mailed to the lobbyist by U.S. Certified Mail within three days following the suspension. Reinstatement will occur on the date the required report or payment is received in the Commission office. A notice of the reinstatement must be mailed to the lobbyist by U.S. Certified Mail or given directly to the lobbyist within three days following receipt of the required report or payment.
- D. **Request for Penalty Waiver.** A lobbyist may request a waiver of any late penalty the lobbyist incurs. The request must be made in writing to the Commission and must state the reason for the delinquency. Any such request

must be noted on the agenda of the next Commission meeting. Only the Commission may grant penalty waivers.

- E. **Request for Waiver of Nonsession Reporting Requirement.** A lobbyist may request a waiver of the monthly nonsession reporting requirement set forth in 3 M.R.S.A. §317(4) if the lobbyist does not expect to be engaged in lobbying when the Legislature is not in session. The Director is authorized to provisionally grant such waivers pending approval by the Commission. Provisional waivers may be granted only where a request is properly filed, the statement properly completed, and where there is no apparent reason to doubt the statement is true. During the period in which the waiver is effective, reports will not be required. If lobbying is resumed during the period for which the waiver was granted, the lobbyist must file a monthly disclosure report for the month or months lobbying was conducted.
- F. **Faxing Duly Executed Lobbyist Registration, Reports.** Any registration or report required by 3 M.R.S.A. ch. 15 may be provisionally filed by transmission of a facsimile copy of the duly executed report to the Commission, provided that the original of the same report is received by the Commission within 5 calendar days thereafter.

4. **Matters Outside the Commission's Jurisdiction.** If the Director and Counsel are in agreement that the subject matter of a request for an investigation is clearly outside the jurisdiction of the Commission, the staff may forward the request to the appropriate authority or return it to the person who made the request, provided that the staff notifies the Commission members of the action at the next Commission meeting. [NOTE: *MOVED FROM ABOVE WITHOUT CHANGE*]

## SECTION 5. FACT FINDING AND INVESTIGATIONS

1. **Before Commission Meeting.** With respect to any inquiry, ~~report~~ complaint, or request for Commission action properly filed in accordance with the preceding section, or any potential violation that comes to the attention of Commission staff through an audit or review of reports, the Director may conduct such preliminary fact finding as is deemed prudent and desirable. When the Director and Counsel find a basis for a preliminary investigation, they will recommend such steps to the Chair as necessary. ~~Pursuant to reviewing reports or finding of fact, the Director, in consultation with Counsel, will prepare a summary of findings and recommendations for inclusion on the agenda.~~ The Chair is authorized to issue subpoenas in the name of the Commission to compel the attendance of witnesses or the production of records, documents or other evidence when the Chair and the Commission's Counsel are in agreement that the testimony or evidence sought by the subpoena is necessary to disposition of the matter; and to issue any subpoena in the name of the Commission on behalf of any person having a statutory right to an agency subpoena. Consultations between the Commission and its Counsel concerning an investigation (including the issuance of subpoenas) where premature public knowledge of the investigation would place the Commission or another investigatory office at a substantial disadvantage may be held in executive session pursuant to 1 M.R.S.A. §§ 405(6)(E), 1005, and 1013(3). Any oral testimony compelled by a subpoena issued by this provision will be presented to the Commission or its staff. When a matter is ready for presentation to the Commission, the Director, in consultation

with Counsel, will prepare a summary of findings and recommendations for inclusion on the agenda.

2. **By the Commission.** Once any matter is reached on the agenda of a Commission meeting, the Commission will control any further investigation or proceedings. No hearings will be held except by direction of the Commission. On a case-by-case basis, the Commission may authorize its Chair, Director, or any ad hoc committee of its members, to conduct further investigative proceedings on behalf of the Commission between Commission meetings. Any authorization so conferred will be fully reflected in the minutes of the Commission meeting.

## SECTION 7. EXPENDITURES

1. **Expenditures by Consultants, Employees, and Other Agents of a Political Campaign.** Each expenditure made on behalf of a candidate, political committee, or political action committee by any person, agency, firm, organization, etc., employed or retained for the purpose of organizing, directing, managing or assisting the candidate, the candidate's committee, or the political action committee must be reported separately by the candidate or committee as if made or incurred by the candidate or committee directly. The report must include the name of the third party vendor or payee to whom the expenditure was made, the date of the expenditure, and the purpose and amount of the expenditure. It is not sufficient to report only the total retainer or fee paid to the person, agency, firm, organization, etc., if that retainer or fee was used to pay third party vendors or payees for campaign-related goods and services.
2. **Expenditures by Political Action Committees.** In addition to the requirements set forth in 21-A M.R.S.A. §1060(4), the reports must contain the purpose of each expenditure and the name of each payee and creditor.
3. **Timing of Reporting Expenditures**
  - A. Placing an order with a vendor for a good or service; signing a contract for a good or service; the delivery of a good or the performance of a service by a vendor; or a promise or an agreement (including an implied one) that a payment will be made constitutes an expenditure, regardless whether any payment has been made for the good or service.
  - B. Expenditures must be reported at the earliest of the following events:
    - (1) The placement of an order for a good or service;
    - (2) The signing of a contract for a good or service;
    - (3) The delivery of a good or the performance of a service by a vendor;
    - (4) A promise or an agreement (including an implied one) that a payment will be made; or
    - (5) The making of a payment for a good or service.

- C. At the time the duty to report an expenditure arises, the person submitting the report is required to determine the value of goods and services to be rendered (preferably through a written statement from the vendor) and to report that value as the amount of the expenditure. If the expenditure involves more than one candidate election, the report must include an allocation of the value to each of those candidate elections.
4. **Advance Purchases of Goods and Services for the General Election**
- A. Consulting services, or the design, printing or distribution of campaign literature or advertising, including the creation and broadcast of radio and television advertising, contracted or paid for prior to the primary election must be received prior to the primary election in order to be considered primary election expenditures.
- B. If the Commission receives a complaint stating that a candidate or a committee purchased goods or services before a primary election for use in the general election, the Commission may request that the candidate or committee distinguish which of the goods and services were used in the primary election and which were used in the general election.
5. All campaign-related payments made with the personal funds or credit card of the candidate or an individual authorized by the candidate must be reported as expenditures in the reporting period during which the payment to the vendor or payee is made. The candidate must report the name of the vendor or payee to whom the payment was made, the date of the expenditure, and the purpose and amount of the expenditure. When the expenditure is reported, the candidate should indicate the person who made the payment by entering "Paid by [name of candidate or supporter]" in the remarks section of the expenditure schedule. It is not sufficient to report only the name of the candidate or authorized individual to whom reimbursement was made and the total amount of the reimbursement. If a Maine Clean Election Act candidate uses his or her personal funds to make an expenditure, the campaign must reimburse the candidate within the same reporting period.
6. Multiple expenditures for bank fees and for vehicle travel may be reported in an aggregate amount, provided that the candidate or committee identifies the time period of the expenditures in the remarks section of the report.
7. When a political action committee or party committee makes an expenditure for a communication to voters for the purpose of influencing the election of a clearly identified candidate, the amount spent to influence that candidate's election must be specified on the regularly filed campaign finance report of the committee, regardless whether the communication expressly advocates for the election or defeat of the candidate. If a single expenditure influences the election of more than one candidate, the political action committee or party committee shall itemize the amount spent per candidate.

## **SECTION 9. ACCELERATED REPORTING SCHEDULE**

1. **General.** In addition to other reports required by law, any candidate for Governor, State Senator or State Representative who is not certified as a Maine Clean Election Act candidate under Title 21-A §1121 *et seq.*, and who has a certified candidate as an opponent in an election must comply with the following reporting requirements on forms prescribed, prepared, and provided by the Commission.

INFORMATIONAL NOTE: Title 21-A §1017 prescribes reporting requirements for candidates.

2. **101% Trigger Report.** Any candidate subject to this section, who receives, spends or obligates more than ~~4% in excess of~~ the primary or general election distribution amounts for a Maine Clean Election Act candidate opponent in the same race, must file with the Commission, within 48 hours of such receipt, expenditure, or obligation, a report detailing the candidate's total campaign contributions, receipts, expenditures and obligations to date. The Commission will notify all candidates who have an opposing certified candidate of the applicable distribution amounts and of the trigger report requirement.
3. ~~Any privately funded candidate with a Maine Clean Election Act opponent shall file A nonparticipating candidate who is required to file a report under subsection 2 shall file no later than 5:00 p.m. the following three reports detailing the candidate's total campaign contributions, obligations and expenditures to date, except that a candidate who has not received, spent, or obligated the amount sufficient to require a report under subsection 2 may file an affidavit, by the date the report is due, attesting that the candidate has not received, spent or obligated that amount:~~
  - A. ~~a report filed not later than 5:00 p.m. on the 42nd day before the date on which an election is held that is complete as of the 44th day before the that date of that election;~~
  - B. ~~for gubernatorial candidates only, a report filed not later than 5:00 p.m. on the 24<sup>st</sup> 25<sup>th</sup> day before the date on which an election is held that is complete as of the 23<sup>rd</sup> 27<sup>th</sup> day before the that date of that election; and~~
  - C. ~~a report filed not later than 5:00 p.m. on the 12<sup>th</sup> 18<sup>th</sup> day before the date on which an election is held that is complete as of the 14<sup>th</sup> 20<sup>th</sup> day before the that date of that election; and~~
  - D. ~~a report on the 6th day before the date on which an election is held that is complete as of the 8th day before that date.~~
4. **24-Hour Report.** Any candidate who is required to file a ~~101% trigger~~ report must file an updated report with the Commission reporting single expenditures of \$1,000 or more by candidates for Governor, \$750 by candidates for State Senator, and \$500 by candidates for State Representative made after the 14th day before any election and more than 24 hours before ~~5:00~~ 11:59 p.m. on the date of that election. The report must be submitted to the Commission within 24 hours of those expenditures.

5. **Filing by Facsimile or Electronic Means.** For purposes of this section, reports may be filed by facsimile or by other electronic means acceptable to the Commission, and such reports will be deemed filed when received by the Commission provided that the original of the same report is received by the Commission within 5 calendar days thereafter.

## SECTION 10. REPORTS OF INDEPENDENT EXPENDITURES

1. **General.** Any person, party committee, political committee or political action committee that makes an independent expenditure aggregating in excess of \$100 per candidate in an election must file a report with the Commission according to this section.
2. **Definitions.** For purposes of this section, the following phrases are defined as follows:
  - A. "Clearly identified," with respect to a candidate, has the same meaning as in Title 21-A, chapter 13, subchapter II.
  - B. "Expressly advocate" means any communication that uses phrases such as "vote for the Governor," "reelect your Representative," "support the Democratic nominee," "cast your ballot for the Republican challenger for Senate District 1," "Jones for House of Representatives," "Jean Smith in 2002," "vote Pro-Life" or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Woody," "defeat" accompanied by a picture of one or more candidate(s), "reject the incumbent," or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say "Pick Berry," "Harris in 2000," "Murphy/Stevens" or "Canavan!".
  - C. "Independent expenditure" has the same meaning as in Title 21-A §1019-B. Any expenditure made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents is considered to be a contribution to that candidate and is not an independent expenditure.
3. **Reporting Schedules.** Independent expenditures must be reported to the Commission in accordance with the following provisions:
  - A. Independent expenditures aggregating in excess of \$100 per candidate per election but not in excess of \$250 made by any person, party committee, political committee or political action committee must be reported to the Commission in accordance with the following reporting schedule, except that expenditures made ~~in the last 11 days~~ after the 14th day before an election must be reported within 24 hours of the expenditure.
    - (1) **Quarterly Reports.** Quarterly reports must be filed by 5:00 p.m. on
      - (a) ~~A report must be filed on~~ January 15th and be complete as of January 5th;

- (b) ~~A report must be filed on~~ April 10th and be complete as of March 31st;
- (c) ~~A report must be filed on~~ July 15th and be complete as of July 5th; and
- (d) ~~A report must be filed on~~ October 10th and be complete as of September 30th.

- (2) **Pre-Election Report.** A report must be filed by 5:00 p.m. on the ~~12th~~ 14th day before the election is held and be complete as of that day.

If the total of independent expenditures made to support or oppose a candidate exceed \$100, each subsequent amount spent to support or oppose the candidate must be reported as an independent expenditure. As long as the total amount spent with respect to the candidate does not exceed \$250, all reports must be filed according to the deadlines in this paragraph. If the total amount spent per candidate exceeds \$250, the reports must be filed in accordance with paragraph B.

[NOTE: FOR EXAMPLE, IF A COMMITTEE MAKES THREE \$80 EXPENDITURES IN SUPPORT OF A CANDIDATE ON SEPTEMBER 20, THE 15TH DAY BEFORE THE ELECTION AND THE 8TH DAY BEFORE THE ELECTION, THOSE THREE EXPENDITURES MUST BE REPORTED ON OCTOBER 10th, AND THE ~~12TH~~ 14TH AND 7TH DAYS BEFORE THE ELECTION, RESPECTIVELY.]

- B. Independent expenditures aggregating in excess of \$250 per candidate per election made by any person, party committee, political committee or political action committee must be reported to the Commission within 24 hours of those expenditures. If any additional expenditures, regardless of amount, increase the total spent per candidate above the threshold of \$250, each additional expenditure must be reported within 24 hours.

[NOTE: FOR EXAMPLE, IF A COMMITTEE HAS REPORTED INDEPENDENT EXPENDITURES TOTALING \$300 IN SUPPORT OF A CANDIDATE, AND THE COMMITTEE MAKES AN ADDITIONAL \$50 INDEPENDENT EXPENDITURE IN SUPPORT OF THE CANDIDATE, THE ADDITIONAL \$50 EXPENDITURE MUST BE REPORTED WITHIN 24 HOURS.]

- C. Reports must contain information as required by Title 21-A, chapter 13, subchapter II (§§ 1016-1017-A), and must clearly identify the candidate and indicate whether the expenditure was made in support of or in opposition to the candidate. Reports filed after the eighth day before an election must include the following information:
1. the date on which the person making the expenditure placed the order with the vendor for the goods or services;
  2. the approximate date when the vendor began providing design or any other services in connection with the expenditure;

3. the date on which the person making the expenditure first learned of the total amount of the expenditure; and
  4. a statement why the expenditure could not be reported by the eighth day before the election.
- D. A separate 24-Hour Report is not required for expenditures reported in an independent expenditure report.
4. **Multi-Candidate Expenditures.** When a person or organization is required to report an independent expenditure for a communication that supports multiple candidates, the cost should be allocated among the candidates in rough proportion to the benefit received by each candidate.
- A. The allocation should be in rough proportion to the number of voters who will receive the communication and who are in electoral districts of candidates named or depicted in the communication. If the approximate number of voters in each district who will receive the communication cannot be determined, the cost may be divided evenly among the districts in which voters are likely to receive the communication.
- [NOTE: FOR EXAMPLE, IF CAMPAIGN LITERATURE NAMING SENATE CANDIDATE X AND HOUSE CANDIDATES Y AND Z ARE MAILED TO 10,000 VOTERS IN X'S DISTRICT AND 4,000 OF THOSE VOTERS RESIDE IN Y'S DISTRICT AND 6,000 OF THOSE VOTERS LIVE IN Z'S DISTRICT, THE ALLOCATION OF THE EXPENDITURE SHOULD BE REPORTED AS: 50% FOR X, 20% FOR Y, and 30% FOR Z.]
- B. If multiple county or legislative candidates are named or depicted in a communication, but voters in some of the candidates' electoral districts will not receive the communication, those candidates should not be included in the allocation.
- [NOTE: FOR EXAMPLE, IF AN EXPENDITURE ON A LEGISLATIVE SCORECARD THAT NAMES 150 LEGISLATORS IS DISTRIBUTED TO VOTERS WITHIN A TOWN IN WHICH ONLY ONE LEGISLATOR IS SEEKING RE-ELECTION, 100% OF THE COST SHOULD BE ALLOCATED TO THAT LEGISLATOR'S RACE.]
- C. If a candidate who has received matching funds because of a multi-candidate communication believes that he or she deserves additional matching funds because the communication disproportionately concerns his or her race, the Commission may grant additional matching funds in proportion to the relative treatment of the candidates in the communication.
5. **Rebuttable Presumption.** Under Title 21-A M.R.S.A. §1019-B(1)(B), an expenditure made to design, produce or disseminate a communication that names or depicts a clearly identified candidate in a race involving a Maine Clean Election Act candidate and that is disseminated during the 21 days before ~~an~~ a primary election and 35 days before a general election will be presumed to be an independent expenditure, unless the person

making the expenditure submits a written statement to the Commission within 48 hours of the expenditure stating that the cost was not incurred with the intent to influence the nomination, election or defeat of a candidate.

A. The following types of communications may be covered by the presumption if the specific communication satisfies the requirements of Title 21-A M.R.S.A. §1019-B(1)(B):

- (1) Printed advertisements in newspapers and other media;
- (2) Television and radio advertisements;
- (3) Printed literature;
- (4) Recorded telephone messages;
- (5) Scripted telephone messages by live callers; and
- (6) Electronic communications.

This list is not exhaustive, and other types of communications may be covered by the presumption.

B. The following types of communications and activities are not covered by the presumption, and will not be presumed to be independent expenditures under Title 21-A M.R.S.A. §1019-B(1)(B):

- (1) news stories and editorials, unless the facilities distributing the communication are owned or controlled by the candidate, the candidate's immediate family, or a political committee;
- (2) activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not name or depict a clearly identified candidate;
- (3) any communication from a membership organization to its members or from a corporation to its stockholders if the organization or corporation is not organized primarily for the purpose of influencing the nomination or election of any person for state or county office;
- (4) the use of offices, telephones, computers, or similar equipment when that use does not result in additional cost to the provider; and
- (5) other communications and activities that are excluded from the legal definition of "expenditure" in the Election Law.

C. If an expenditure is covered by the presumption and is greater, in the aggregate, than \$100 per candidate per election, the person making the expenditure must file an independent expenditure report or a signed written statement that the expenditure was not made with the intent to influence the nomination, election or

defeat of a candidate. The filing of independent expenditure reports should be made in accordance with the filing schedule in subsections 3(A) and 3(B) of this rule. Independent expenditures aggregating \$100 or less per candidate per election do not require the filing of an independent expenditure report or a rebuttal statement.

- D. If a committee or association distributes copies of printed literature to its affiliates or members, and the affiliates or members distribute the literature directly to voters, the applicable 21-day or 35-day period applies to the date on which the communication is disseminated directly to voters, rather than the date on which the committee or association distributes the literature to its affiliates or members.
- E. For the purposes of determining whether a communication is covered by the presumption, the date of dissemination is the date of the postmark, hand-delivery, or broadcast of the communication.
- F. An organization that has been supplied printed communications covered by the presumption and that distributes them to voters must report both its own distribution costs and the value of the materials it has distributed, unless the organization supplying the communications has already reported the costs of the materials to the Commission. If the actual costs of the communications cannot be determined, the organization distributing the communication to voters must report the estimated fair market value.
- G. If a person wishes to distribute a specific communication that appears to be covered by the presumption and the person believes that the communication is not intended to influence the nomination, election or defeat of a candidate, the person may submit the rebuttal statement to the Commission in advance of disseminating the communication for an early determination. The request must include the complete communication and be specific as to when and to whom the communication will be disseminated.

## SECTION 11. REPORTS OF BALLOT QUESTION CAMPAIGN ACTIVITY BY PERSONS AND ORGANIZATIONS OTHER THAN POLITICAL ACTION COMMITTEES

When a person or organization is required under 21-A M.R.S.A. §1056-B to file reports because of contributions or expenditures of more than \$1,500 made in support of or in opposition to a ballot question, the reports must be filed according to the following schedule:

1. **Quarterly Reports.** Reports must be filed by 11:59 p.m. on the following deadlines until the date of the election on which the question is on the ballot:
  - A. A report must be filed on January 15th and be complete as of January 5th;
  - B. A report must be filed on April 10th and be complete as of March 31st;
  - C. A report must be filed on July 15th and be complete as of July 5th; and
  - D. A report must be filed on October 10th and be complete as of September 30th.
  
2. **Pre- and Post-Election Reports.** The person or organization must also file the following reports by 11:59 p.m. on the following deadlines:
  - A. A report must be filed on the ~~6th~~ 11th day before the election is held and be complete as of the ~~12th~~ 14th day before the election.
  - B. A report must be filed on the 42nd day after the election is held and be complete as of the 35th day after the election.
  
3. **24-Hour Reports.** Any contribution or expenditure in excess of \$500 made after the ~~12th~~ 14th day before the election and more than 24 hours before the election must be reported within 24 hours of that contribution or expenditure or by noon of the first business day after the contribution or expenditure, whichever is later.

### PROPOSED AMENDMENT TO THE CAMPAIGN FINANCE REPORTING FORM

The Commission proposes to eliminate Schedule E of the campaign finance reporting form for county and legislative candidates who have financed their campaign through accepting traditional campaign contributions. This form requires candidates to list campaign property or equipment that could be converted to the candidate's personal use after an election (*e.g.*, computers, fax machines, or telephones) and how such property or equipment is disposed of. This schedule would continue to be required for candidates who have purchased such property with Maine Clean Election Act funds, pursuant to 21-A M.R.S.A. §§ 1125(12) and 1126, and Chapter 3, Section 7(2)(C) of the Commission rules.